

CITY OF TIGARD, OREGON  
TIGARD CITY COUNCIL  
ORDINANCE NO. 07-01

AN ORDINANCE AMENDING THE TIGARD MUNICIPAL CODE, CHAPTER 11.04.170,  
REGARDING SOLID WASTE MANAGEMENT ENFORCEMENT

WHEREAS, the City of Tigard has two franchised solid waste haulers who have exclusive rights to provide garbage service in specific areas of the City; and

WHEREAS, non-franchised haulers have been violating these franchises by providing garbage service within the boundaries of the franchisees; and

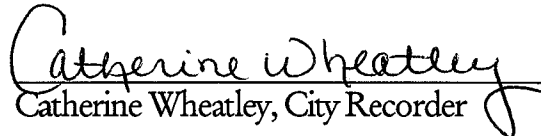
WHEREAS, giving franchisees the authority to take legal action against non-franchised haulers who operate within their boundaries is an effective means to address franchise violations.

NOW, THEREFORE, THE CITY OF TIGARD ORDAINS AS FOLLOWS:

SECTION 1: Chapter 11.04.170 of the Tigard Municipal Code is amended as shown on Attachment 1 of this ordinance.

SECTION 2: This ordinance shall be effective 30 days after its passage by the Council, signature by the Mayor, and posting by the City Recorder.

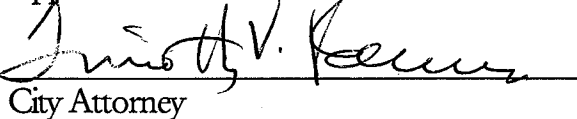
PASSED: By UNANIMOUS vote of all Council members present after being read by number and title only, this 13<sup>th</sup> day of March, 2007.

  
Catherine Wheatley, City Recorder

APPROVED: By Tigard City Council this 13<sup>th</sup> day of March, 2007.

  
Craig Dirksen, Mayor

Approved as to form:

  
City Attorney

March 13, 2007  
Date

## TIGARD MUNICIPAL CODE

this chapter. The rules and regulations shall be printed or typewritten, and be maintained for inspection in the office of the City Recorder. All proposed rules and regulations promulgated under the authority of this section, and all amendments thereto, shall be immediately forwarded to the franchisee operating under this chapter for response. The franchisee shall have thirty days to respond in writing to such proposed rules and regulations. If the franchisee has objections or revisions to the proposed rules, the franchisee shall meet and confer with the City Manager regarding the franchisees concerns. If the concerns are not resolved through consultation with the City Manager, then the City Manager shall forward the proposed rule, with the franchisees comments, to the City Council for its consideration. The franchisee may request that the City Council hold a public hearing on a proposed rule. The Council may approve the proposed rule as submitted, modify the rule, or reject the rule. The City Manager shall enact all rules by written order. (Ord. 03-08, Ord. 91-36 §1 Exh. A(part), 1991: Ord. 78-64 §14, 1978).

### 11.04.170 Enforcement Officers.

1. The City Manager shall enforce the provisions of this chapter, and the City's agents, including police officers and other employees so designated, may enter affected premises at reasonable times for the purpose of determining compliance with the provisions and terms of this chapter. However, no premises shall be entered without first attempting to obtain the consent of the owner or person in control of the premises if other than the owner. If consent cannot be obtained, the City representative shall secure a search warrant from the City's Municipal Court before further attempts to gain entry, and the City shall have recourse to every other remedy provided by law to secure entry. (Ord. 03-08, Ord. 91-36 §1 Exh. A(part), 1991: Ord. 78-64 §13, 1978).

2. A franchisee shall have a cause of action in Washington County Circuit Court against any person providing service in the Tigard city limits without having a franchise in violation of Section 11.04.040. The cause of action includes any appropriate relief, including injunctive relief.

a. Notice to City Manager. Before a franchisee may commence a civil action, the franchisee must provide thirty days written notice to the City Manager. The City Manager may elect either to enforce the provisions of this chapter in accordance with 11.04.170, or allow the franchisee to commence a civil action in Washington County Circuit Court against the person in violation of Section 11.04.040. If the City Manager fails to respond to the notice, the franchisee may proceed with the civil action. A franchisee may not commence a civil action if the City Manager is pursuing enforcement actions.

b. Damages. Any person providing service in the Tigard city limits without having a franchise pursuant to Section 11.04.040 will be subject to the following damages: lost customer revenue to be paid to the franchisee; unpaid franchise fees owed to the city pursuant to Section 11.04.060, which shall be paid to the City of Tigard; liquidated damages in the amount of \$500 for each violation to be paid to the City of Tigard in lieu of imposition of the civil penalty ; and any other legal remedies available. The court shall award reasonable attorney fees to the prevailing party.

c. Violations. For purposes of liquidated damages in subsection b, each incident of service provided without a franchise shall be a separate violation. Incident of service means each and every individual act of service, as defined by 11.04.030(13), performed by the violator. For example, providing service without a franchise by hauling a drop box for a

## TIGARD MUNICIPAL CODE

person on six occasions is six violations.

d. Indemnity. The City of Tigard shall have no liability for the franchisee's attorney fees and costs incurred for electing to pursue enforcement under these provisions. Any franchisee who elects to act under this provision shall indemnify the City of Tigard in the event of any claims filed against the city arising out of the franchisee's enforcement actions brought under the provisions of this chapter.

### **11.04.180    Penalty.**

Violation by any person of the provisions of this chapter, rules adopted pursuant to Section 11.04.160, or of a permit issued pursuant to Section 11.04.105, shall be deemed a Class 1 civil infraction and shall be punishable according to the provisions set forth in Chapter 1.16 of this code. (Ord. 91-36 §1 Exh. A(part), 1991: Ord. 78-64 §19, 1978).■